PISM | POLSKI INSTYTUT SPRAW MIĘDZYNARODOWYCH
THE POLISH INSTITUTE OF INTERNATIONAL AFFAIRS

Policy Paper

No. 48
December 2012

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Bridging a Differentiated Union: The Polish-German Tandem in Euro-Plus Governance

The necessity of strengthening eurozone economic governance is undisputed. Given the existence of so called pre-ins (which are committed to joining the common currency), however, this cannot occur only at the level of the eurozone's 17 members and over the head of the EU institutions. A genuine Economic and Monetary Union (EMU) must be reconciled with the vital interests of all EU Member States, in particular the "pre-ins". This difficult situation creates an opportunity for the emerging German–Polish relationship as a key to maintaining the EU's integrity in a more-differentiated Union.

Introduction

The ongoing sovereign debt crisis is pushing the 17 euro members towards deeper economic and political integration. This raises questions for the remaining Member States. Although deeper cooperation among a sub-group of Member States is not a new phenomenon within the European Union,[1] the eurozone crisis has given "differentiated integration" a new and altered quality. Not only does the development of the Euro-17 (the "ins") into an integrated core affect almost every other area of EU policy by intensifying their cooperation both within and outside the EU treaty framework. Thus, further integration in

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[1] The forms of differentiated integration regulated in the EU treaties include: (i) opt-outs envisaged in the protocols to the treaties (e.g., in Schengen, justice and home affairs or defence policy); (ii) enhanced cooperation that is applicable in EU non-exclusive policy areas; and, (iii) permanent structured cooperation in the area of Common Security and Defence Policy. Moreover, Member States can enter into the usual international agreements amongst themselves that are separate from the EU framework.

the eurozone poses a distinct challenge to Member States such as Poland which are committed to adopting the euro (the "pre-ins"). New, euro-only structures not only affect the economies of the "pre-ins" and will become binding when they eventually join the common currency but also they may create a rift in the EU if adopted in a non-consensual manner.

The competing priorities over the future architecture of the Union and the euro area are clear. On the one hand, the euro member states have a strong interest in negotiating and taking sensitive decisions in a forum marked by *confidentiality* and *efficiency* in order to overcome the debt crisis and re-establish trust in the euro area economy. On the other hand, the "pre-ins", with their commitment to join the common currency and since they are directly affected by economic decisions in the eurozone, have a genuine interest in ensuring the *transparency* and *inclusiveness* of these decisions, at least on a governmental level. Those interests are inscribed in the EU institutional structure. As those institutions developed to serve the goals of the EU 27 (and soon 28), these serve as a tool to satisfy competing interests and to keep both the integrity of the EU intact and accommodate the interests of the different groupings. The European Parliament and European Commission can even act as forums to counterbalance the negative effects of differentiated integration that endanger the common achievements of the Union, such as the single market.

In this, Poland, the largest "pre-in", and Germany, the main driver behind eurozone reform, should cooperate closely to bridge the gaps in a more-differentiated Union. To do this they will need to resist the recent tendency towards narrow intergovernmentalism and to work together to strengthen the EU framework as a bridge between the Euro-17 and the "pre-ins". Particular attention must therefore be paid to the EU institutions and not just the policy substance. After all, bilateral political compromises between the two can never reflect their full range of interests. By forging the EU's institutional architecture to create bridges between the "ins" and "pre-ins", by contrast, Germany and Poland could strengthen overall EU governance, which would work for both groupings. Poland and Germany should therefore work more closely and develop a partnership that would, on the one hand, enable the euro area to implement effective and fast-acting decision-making structures and, on the other, keep the EU from a kind of fragmentation that threatens paralysis and risks making the recent leaps in integration short-lived. With this in mind, the long-term trend of the EU "going differentiated" should not be lamented, but rather should be used to generate lessons about successful eurozone governance.

Flexibility as the New *Modus Operandi* of European Integration

Originally, differentiated integration was envisaged as a last resort to be used only when negotiations among all Member States broke down.[2] Even though each subsequent treaty change recognised the need for flexible forms of cooperation, until 2010 EU Member

[2] Enhanced cooperation is an emanation of the Member States' acknowledgement that deeper integration should be permissible if others are delayed in achieving strategic integration goals (Art. 20 TEU).

States were very hesitant to make practical use of differentiated integration. For instance, the instrument of "enhanced cooperation" within the EU treaty has only been used in two cases, in 2010 and 2011, although the possibility for it has existed since the Amsterdam treaty entered into force.[3] Despite the advantage of differentiated integration, which allows a smaller group of states to move forward if not all EU members can (yet) agree[4], the threat of growing asymmetries within the Union usually served as a deterrent against making too much use of it. The case of the common European Patent system, negotiated for more than 30 years before the Member States reached for enhanced cooperation, proves that only when negotiations have been blocked for a long time would the EU Member States resort to differentiated integration. It can even been argued that the availability of this procedure has served to mobilise consensus among all of the EU members, who realise that being left behind has greater negative implications than participation.[5]

The debt crisis has inverted this tendency and has seen differentiated integration used as a tool not to spur more inclusive decision-making but to avoid it. Since 2011, differentiated forms of cooperation have become regular tools in eurozone reform, with eurozone members signing a declaration on the Euro Plus Pact (signed by the Euro-17 plus six non-eurozone members) and entering into two international agreements—the European Stability Mechanism (ESM, only for the Euro-17) and the Treaty on the Stability, Coordination and Governance in the Economic and Monetary Union (the so called fiscal compact, which was signed by the 17 eurozone members plus eight non-eurozone members). Moreover, in October 2012 a group of 11 eurozone members agreed to initiate enhanced cooperation for a Financial Transactions Tax (FTT). In each case, a perceived lack of time was one of the major factors leading Member States to apply differentiated integration. By resorting to an intergovernmental treaty after the UK refused consent to revise the EU treaties to tighten domestic budgetary discipline, Germany and France made clear that their number-one priority was safeguarding the euro, and to this end they were even willing to supersede hesitations about a potential rift in the EU. Similarly, in comparison with the seemingly endless discussions in the run-up to the EU Patent System, the process leading to enhanced cooperation for an FTT was compressed.[6] Differentiated

[3] Enhanced cooperation has been used so far in (i) the area of law applicable to divorce and legal separation (see: Council Regulation (EU) no 1259/2010 of 20 December 2010, "Implementing enhanced cooperation in the area of the law applicable to divorce and legal separation", O.J. EU l 343/10, 29.12.2010), and (ii) in the area of the creation of unitary patent protection (see: Council Decision of 10 March 2011, "Authorizing enhanced cooperation in the area of the creation of unitary patent protection", O.J. EU L 76/53.

[4] For a wider analysis of the pros and cons of EU enhanced cooperation in comparison to Preferential Trade Agreements signed by the WTO members offering a flexible cooperation within the WTO system, please see: C.M. Cantore, "We're one, but we're not the same: Enhanced Cooperation and Tension between Unity and Asymmetry in the EU", *Perspectives on Federalism*, vol. 3, no. 3, pp. 1-21, 2011.

[5] F. Tekin, W. Wessels, "Flexibility within the Lisbon Treaty: Trademark or Empty Promise?", *EIPASCOPE*, 2008/1, p. 27.

[6] The Commission's initiative for enhanced cooperation for a financial transaction tax was put forward after only nine months of discussing the proposal for an FTT among all 27 EU members. For more, see: "Proposal for a Council decision authorising enhanced cooperation in the area of financial transaction tax", Brussels, 25 October 2012, COM(2012) 631 final/2 2012/0298 (APP).

integration has, in short, become the main *modus operandi* of economic and monetary integration.

Insiders, "Pre-Ins" and Outsiders in Euro Plus Governance

The Drive for Closer Integration among the Euro-17. The debt crisis has made clear that in order to function properly, the currency area needs to integrate economically to restore trust in the euro and create sustainable growth.[7] While the exact recipe for overcoming the debt and economic crisis is fiercely contested amongst experts and policymakers alike—ranging from debt mutualisation to tight control of national budgets and economic policy—all credible proposals are linked by the common denominator of closer economic and consequently also political integration between the 17 euro members. From the onset of the debt crisis in early 2010 in Greece, the euro members have worked towards much closer economic coordination, with further integration measures on the table.[8] Looking ahead, the Euro-17 have identified four priority areas for closer cooperation for "completing the economic and monetary union"[9]: an integrated financial framework, that is, common supervision and resolution of banks, an integrated budgetary framework as well as an integrated economic policy framework to reinforce growth. Finally, the leaders of the euro area acknowledge that if agreed, these new policy competences have to be embedded in a specific institutional structure with enforced democratic legitimacy.

This drive for much closer economic and political integration might theoretically have been realised under the umbrella of the EU 27. However, while the government of the United Kingdom calls for further euro area integration as a necessary step to overcome the crisis, it has no appetite to join such projects.[10] Not only the UK but also the Czech Republic, and to some extent also Sweden, have emphasised that they will not cooperate on efforts of closer economic integration surrounding the common currency. This only plays into the hands of some of the eurozone member states that favour the idea of closer integration centred primarily around the Euro-17. They can claim that states that have either ruled out eurozone membership or are happy to leave their options open should have no place in these difficult decisions.

The Interests of the "Pre-ins" in Inclusion. Against this background, the "pre-ins" are caught between a rock and hard place—they are not yet included in the structures of the Euro-17, but will eventually have to adopt the quickly changing rules being set for the

[7] For an overview of recent proposals to deepen EMU and the EU, see: J. Janning: "Political Union: Europe's defining moment", *EPC Policy Brief*, July 2012.

[8] T. Kunstein, W. Wessels, "Die Europäische Union in der Währungskrise: Eckdaten und Schlüsselentscheidungen" ("The European Union in the currency crisis: Main developments and decisions"), *Integration*, 4/2011, pp. 308–322.

[9] European Council Conclusions on completing EMU, 18 October 2012.

[10] For instance, in 2011 UK Prime Minister David Cameron called on euro area member states to integrate more closely, if necessary via treaty change, though of course without the participation of the UK. For more, see: G. Parker, L. Barber, "'Time short' for eurozone, says Cameron", *Financial Times*, 9 October 2011.

eurozone. The "pre-ins" also vary both in regards to how to fight the crisis and the expected timeframe to join the euro club.[11] The strategic interests for the "pre-ins" to be included in upcoming projects aimed at deepening the EMU will therefore differ to some extent from Member State to Member State. Additionally, in times of ongoing crisis most of the "pre-ins", although interested in being involved in the changes within the euro area, take a wait-and-see approach towards euro membership; others like the Czech Republic are more explicit in their hesitance to adopt the euro, and join forces with the euro "outs", thus strengthening divisions between the "ins" and "pre-ins".

Nevertheless, the thing in common for almost all of the "pre-ins" is their opposition to creating additional borders between the eurozone and the rest of the EU, thereby *de facto* reducing them to second-class members of the EU. As a result, most of the "pre-ins" have fought to align themselves with the structures of the euro area, for instance by joining the Euro Plus Pact or the fiscal compact. It is the threat of marginalisation that encourages them to closely monitor developments in the Euro-17 and intensify the dialogue on possible ways to extend their cooperation with the euro area in the "Euro Plus" format. As the recent example of a proposal for a "single supervisory mechanism" (SSM) for a banking union shows, however, simple inclusion without the right to have a say over the substance of potential decisions is not in the interest of the "pre-ins".[12] In sum, the clear challenge for the EU is to find balance among the drive for closer cooperation among the Euro-17, aligning the interests of the "pre-ins" and retaining adequate influence and sovereignty for eurozone outsiders who want to remain outside the monetary union.

The Shifting Balance of Power in EU governance

The Top-down Approach: An Opportunity for (Some) Capitals. The most visible shift in the EU decision-making process is the resurgence of intergovernmental decision-making. The meetings of heads of state or government at the European Council, or even more importantly, in the format of Euro Summits, have become the primary forums for taking far-reaching decisions on crisis-management and euro-area reform. The latter format deserves particular attention here. Special meetings of heads of state and government of the euro area were established as a temporary crisis measure, transformed to meetings on a regular basis in 2011 and finally integrated into the fiscal compact as Euro Summits. As a

[11] The involvement of the "pre-ins" in the debate on the EU's future does not necessarily presume the aim to join the common currency in the immediate future. Poland, for instance, while deeply interested in further EU integration, has been holding off joining the euro until the eurozone gets through the crisis, while Latvia has not been particularly vocal about EU governance, but maintains its determination to join the euro by 2014.

[12] Full inclusiveness in projects designed for the euro area are not always legally viable. The participation of the "pre-ins" in the SSM seems to be acceptable only if it does not alter the current ECB decision-making procedures as envisaged by the EU treaties. For an analysis of the Council legal opinion on SSM, see: A. Barker, "Leaked Legal Opinion on Eurozone Banking Union", *Financial Times: Brussels Blog,* 18 October 2012, http://blogs.ft.com/brusselsblog/2012/10/leaked-legal-opinion-on-eurozone-banking-union/#axzz2BRhhoeSv

result, almost all of the meetings of the European Council are now either preceded or followed by Euro Summits in which the more important—and often more substantial—decisions are made amongst the Euro-17.[13] The most obvious example came in October 2011 when the European Council meeting had to be rescheduled to account for decisions that were taken by the Euro-17 at the Euro Summit.

This development has profound implications for the power balance in the EU. While the institutional and political structure of the EU's architecture is designed to buffer inequalities amongst the member states, the highly intergovernmental nature of the European Council or Euro Summits brings national governments to the forefront and privileges the largest eurozone members. The EU institutions, i.e., the Commission, European Parliament and even the ministerial level of the Council, are mostly reduced to formalising and implementing the decisions taken at those summits.

Council and the Eurogroup. The Council, the EU's co-legislator gathering ministers representing all EU Member States, has been challenged over the years by a growing number of differentiated-integration projects. To adapt, decision-making in the Council can legally and politically be modified on each individual vote to include only those Member States that participate in a project of differentiated integration; the representatives of other states are still present at the table as observers, albeit without voting rights.[14] In the current context, however, separate eurozone Council structures excluding the "pre-ins" are gaining even more significance. The Eurogroup, founded at the end of the 1990s as a special forum for euro area ministers of economy and finance to negotiate in a confidential and informal setting, has long provided an exclusive forum to which neither the "pre-ins" nor the "outs" have access. Ever since, its significance has dramatically increased, becoming the major discussion forum for financial assistance packages and economic policy coordination.[15] Although in legal terms it remains an informal forum aimed solely at coordination among the euro member states and unable to take legally binding decisions, political agreements in the Eurogroup are in practice rubberstamped by ECOFIN, generally without debate.[16] Even a politically sensitive issue such as the second assistance programme to Greece of February 2012 was first debated in detail within the Eurogroup. Their decision was adopted the following day by ECOFIN without any further debate.[17] The exclusion of "pre-ins" and

[13] Counting the upcoming December summit, in 2011/2012 a total of 13 formal or informal European Council meetings took place, nine of which were accompanied by Euro Summits. During the last 12 months, only one European Council meeting—the special summit in November 2012 on the Multiannual Financial Framework—took place without a corresponding Euro Summit.

[14] D. Thym, "United in Diversity'—the integration of Enhanced Cooperation into the European Constitutional Order", German Law Journal, 6 (2005), 1731-1748.

[15] U. Puetter, *The Eurogroup: How a secretive circle of Finance Ministers shapes European Economic Governance*, Manchester University Press, 2006.

[16] *Ibidem*.

[17] The Greek Crisis. "The End of the Marathon?", *The Economist—Charlemagne's Notebook (Blog)*, 21 February 2012, www.economist.com/blogs/charlemagne/2012/02/greek-crisis.

permanent euro outsiders from decision-making is thus mostly prominent in the Council structures with the Eurogroup and the Euro Summits.

The Threat of a Division of the European Parliament. Historically, the European Parliament has gained powers with every treaty revision. Having won the right of co-decision for a wide range of policies, it is deeply concerned with the prospect of losing its powers through differentiated integration and to euro summitry. This threat is mitigated when differentiated integration is carried out within the usual EU framework. Such moves allow for parliamentary participation, in recognition of the fact that parliamentary procedures are by their nature transparent and ill-suited to exclusive groupings, and that all EU citizens are affected by joint decisions taken by a few. As a result, all of the 754 MEPs are involved, even in dossiers where their Member State has an opt out (e.g., the UK, Ireland and Denmark in justice and home affairs) or simply has not yet met the entry criteria (e.g., monetary policy). Parliament thus participated in the legislative procedures concerning economic governance in the EU, including the “six pack” of 2011 and the “two pack” currently in negotiation, which are aimed mostly at reforming the stability-and-growth pact governing the euro area.

On the one hand, then, parliamentary participation in the decision-making processes on issues of euro area governance make these not only democratic but also more transparent and more inclusive. The absence of structural divisions between euro and non-euro MEPs is a natural consequence of the supranational character of the assembly representing all of the European Union’s citizens. Parliament may thus function as a bridge and a forum for the whole of the EU. On the other hand, the European Parliament is coming under increased pressure to accommodate patterns of differentiated integration within its own structures. This debate is fired by the euro member states, which perceive the current practice of giving all MEPs a vote as questionable. When Parliament takes a vote on euro area issues, such as resolutions on the debt crisis, currently even the 273 MEPs (36.2% of Parliament) representing voters of Member States outside of the common currency club have a say.[18] Some prominent figures have even called for a special assembly exclusively for euro area member states, something which would deepen the gap between the Euro-17 and the other EU countries.[19] Others propose to establish a special committee within the European Parliament for questions on the common currency and composed only of MEPs from the Euro-17.[20] Both suggestions so far have been rigidly rejected within Parliament itself, as they would undermine the basis of the European Parliament as a fully supranational body representing the EU’s citizens and not their individual Member States. To underline this, Parliament’s Conference of Presidents stressed in October 2012 that in their view, the

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[18] Own calculation based on official figures from the European Parliament.

[19] See for instance: M. Roth, *Der Euro braucht ein Parlament. Für eine Avantgarde von Demokratie und Solidarität (“The Euro needs a Parliament: The case for an avant-garde in democracy and solidarity”)*, Bonn: Friedrich-Ebert-Stiftung. 2011.

[20] H. Mahony, “Eurozone MEPs should have exclusive voting rights, French deputy says”, *EUObserver*, 18 October 2011.

euro is the currency of the EU and Parliament is the legislative body of the EU, so that therefore the European Parliament "is the Parliament of the Euro".[21]

The European Commission: A Weak Link. One traditional bridge-builder accustomed to ensuring coherence within the EU is the European Commission. Proposals to initiate enhanced cooperation are addressed to the Commission, which is obliged by the treaty to keep this mechanism transparent and open for others, and thus is well-equipped to safeguard cohesion among the EU. The increasing pressure of euro integration has not yet affected the Commission's internal organisation, which by way of collegiality serves the common European good. It cannot be excluded, however, that any attempts to further politicise the Commission's activities would at the same time make it more vulnerable to the idea of designating some of its top officials for euro-related matters only.

During the debt crisis, the Commission has bent with surprising alacrity to the new political constellation. This could be due in part to its "mixed" nature (each Member State designates its candidate for commissioner who, in carrying out his or her responsibilities along with the others, is supposed to represent the interests of the EU as a whole) but also to its role related to the surveillance of economic policies and national budgets. The Commission has been involved in dealing with the sovereign debt crisis from the start and has won a privileged position in the ESM Treaty and fiscal compact.

Paradoxically, however, its participation in these recent platforms of differentiated cooperation probably will not enhance its inter-institutional position. Even though formally the Commission has been given stronger instruments to enforce the budgetary discipline of the Member States, it is vulnerable to influence by key Member States. If the Commission is to serve as a bridge between the Euro-17, the "pre-ins" and the permanent outsiders it should gain more credibility. This could be provided by means of increasing the accountability of the Commission to the European Parliament.[22] It seems therefore, that only further reforms reinforcing the community method would, on the one hand, strengthen its authority in economic governance and, on the other, equip it with the tools to safeguard cohesion among the whole EU.

Conclusions and Recommendations: Bridging a Differentiated Union

Driven not only by the debt crisis but also the severe differences among its members, the EU is swiftly moving towards a permanently differentiated union centred on a eurozone core. The EMU has been hobbling along on its shortened economic leg for years, but the current crisis made further shifts of economic power to the EU inevitable. From an option seldom exploited and often conducive to more flexible and inclusive integration,

[21] B. Fox, "No Eurozone-only Assembly say MEPs", *EUObserver*, 6 October 2012, www.euobserver.com.

[22] See the interesting analysis in M. Maduro, "Politicizing the Union to strengthen the Community Method", *Notre Europe Tribune*, 5 October 2012, www.notre-europe.eu, in which the author argues that, despite the risks arising from the Commission's politicisation, it must be strengthened to preserve the community method.

differentiated integration has become a form of mainstream, exclusive tool for EU economic cooperation and has the possibility of spreading to other policy areas. As the euro area is moving towards closer integration in fiscal, economic and financial policy, it becomes clear that in the medium term the major steps on integration will be taken via the instrument of differentiated integration.

The primary and shared goal of all 27 "ins", "pre-ins" and "outs" must be to *keep differentiated integration open.* This would allow them to satisfy the competing interests of the Member States and facilitate common achievements for the Union, most importantly the single market. In the discussion on the consequences of fragmentation it tends to be forgotten that the Euro-17 have as strong an interest in keeping the single market untouched as do the "pre-ins" and permanent "outs". To this end, the Polish–German tandem should pursue four main goals:

First, both Germany and Poland, as strong beneficiaries of the single market, should argue that further euro area integration should not result in the single market's fragmentation but rather may actually spur its deepening. Promoting the single market as one of the greatest achievements of all the Member States would additionally limit the growing gap between most of the EU and such Member States as Great Britain, Sweden or the Czech Republic, for which the internal market remains one of the major incentives to stay aligned with Europe.

Second, they should press for an agreement that all future projects of differentiated integration on the euro area be organised within the institutional, legal and political framework of the European Union. The EU framework ensures coherence, and the EU institutions, including the European Parliament and Commission, serve as bridges between the different groupings in the EU when their role is not undermined. This involves a clear trade-off—organising differentiated integration outside the EU framework is speedier and more flexible, but in the long term it is damaging to EU coherence and the integrity of the single market. For a sustainable union, they therefore need to convince their partners, in particular in Paris and London, that the price of keeping the EU framework intact and whole is worth paying, for all EU members.

Third, EU integrity should be a common denominator in German–Polish discussions on how to increase the democratic legitimisation of the differentiated-integration projects. Currently confronted with divergent ideas for reform of the European Parliament, it will be a challenge for both partners to agree on ways of increasing the democratic legitimisation of the euro area decision-making process. "Pre-ins", opposed to the singling out of euro-MEPs, might be prepared to concede the establishment of a debating platform in the Euro Plus format. This would gather MEPs coping with budgetary, fiscal and economic affairs and their national counterparts from signatories of the fiscal compact, as envisaged in that document. This platform should not supersede the ordinary legislative process but be treated as a forum to informally stimulate exchanges between the parliaments. This would meet euro members' expectations about enhancing their national parliaments' roles in the decision-making process as well as the concerns of the "pre-ins" about limiting the discussions to the

Euro-17. If the euro area took a large step in integration, such as in economic policy, however, the problem of democratic legitimisation in those policy areas might need to be addressed within the European Parliament.

Finally, Germany should promote within the euro area structures some permanent and transparent rules for the exchange of information between the “ins” and those “pre-ins” determined to join the common currency. “Pre-ins” should have the right to be regularly informed about euro area negotiations in a confidential manner. This arrangement needs an institutional anchor, and could, for instance, take the form of observer status in the working groups preparing the Eurogroup and Euro Summit sessions. The various modes of “pre-in” inclusion should be thoroughly tested before the next fundamental treaty revision, when formalising this cooperation could be taken into consideration.